6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0558; FRL-9308-01-R6]

Finding of Failure to Attain the Primary 2010 One-Hour Sulfur Dioxide Standard for the St. Bernard Parish, Louisiana Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the St. Bernard Parish sulfur dioxide (SO_2) nonattainment area ("St. Bernard area" or "area") failed to attain the primary 2010 one-hour SO_2 national ambient air quality standard (NAAQS) under the Clean Air Act (CAA or the Act) by the applicable attainment date of October 4, 2018. This proposed determination is based upon review of compliance records for the area's primary SO_2 source, the Rain CII Carbon, LLC (Rain) facility, in addition to dispersion modeling based on the allowable limits showing design values close to the SO_2 NAAQS. If the EPA finalizes this determination as proposed, the State of Louisiana will be required to submit revisions to the Louisiana State Implementation Plan (SIP) that, among other elements, provide for expeditious attainment of the 2010 SO_2 standard.

DATES: Comments must be received on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0558, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

***Docket*:** The index to the docket for this action is available electronically at https://www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI). Publicly available docket materials are available electronically through *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Karolina Ruan Lei, EPA Region 6 Office, SO_2 and Regional Haze Section (R6-ARSH), 214-665-7346, *ruan-lei.karolina@epa.gov*. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via https://www.regulations.gov, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION*:*

Throughout this document ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ means EPA.

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I. Background

A. The 2010 SO_2 NAAQS

Under section 109 of the Act, the EPA has established primary and secondary NAAQS for certain pervasive air pollutants (referred to as "criteria pollutants") and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined, including a margin of safety, are requisite to protect the public health. The secondary NAAQS represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

Under the CAA, the EPA must establish NAAQS for criteria pollutants, including SO_2. SO_2 is primarily released to the atmosphere through the burning of fossil fuels by power plants and other industrial facilities. SO_2 is also emitted from industrial processes including metal extraction from ore and heavy equipment that burn fuel with a high sulfur content. Short-term

exposure to SO_2 can damage the human respiratory system and increase breathing difficulties. Small children and people with respiratory conditions, such as asthma, are more sensitive to the effects of SO_2. Sulfur oxides at high concentrations in ambient air can also react with compounds to form small particulates that can penetrate deeply into the lungs and cause health problems.

The EPA first established primary SO_2 standards in 1971 at 0.14 parts per million (ppm) over a 24-hour averaging period and 0.3 ppm over an annual averaging period.[1] In June 2010, the EPA revised the NAAQS for SO_2 to provide increased protection of public health, providing for revocation of the 1971 primary annual and 24-hour SO_2 standards for most areas of the country following area designations under the new NAAQS.[2] The primary 2010 SO_2 NAAQS is 75 parts per billion (ppb), or 0.075 ppm, over a one-hour averaging period.[3] A violation of the 2010 one-hour SO_2 NAAQS occurs when the annual 99th percentile of ambient daily maximum one-hour average SO_2 concentrations, averaged over a 3-year period, exceeds 75 ppb.[4]

B. Designations and Attainment Dates for the 2010 SO_2 NAAQS

Following promulgation of any new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On August 5, 2013, the EPA finalized its first round of designations for the 2010 primary SO_2 NAAQS.[5] In this 2013 action, the EPA designated 29 areas in 16 states as nonattainment for the 2010 SO_2 NAAQS, including the St. Bernard area in Louisiana. The EPA designated the St. Bernard area nonattainment based on certified monitoring data for years 2009 through 2011.[6] The EPA's initial round of designations for the 2010 SO_2 NAAQS including the St. Bernard area became effective on October 4, 2013. Pursuant to CAA section 192(a), the maximum attainment

[1] See 36 FR 8186 (April 30, 1971).
[2] See 40 CFR 50.4(e).
[3] See 75 FR 35520 (June 22, 2010).
[4] See 40 CFR 50.17.
[5] See 78 FR 47191 (August 5, 2013).
[6] See 78 FR 47191, codified at 40 CFR part 81, subpart C.

date for the St. Bernard area was October 4, 2018, five years after the effective date of the final action designating the area as nonattainment for the 2010 SO_2 NAAQS.

C. Louisiana's Nonattainment SIP Revision

Section 172(c) of the CAA lists the required components of a nonattainment plan submittal. In addition to an attainment demonstration, the nonattainment plan addresses the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, implementation of reasonably available control measures and reasonably available control technology (RACM/RACT), base-year and projection-year emission inventories, a new source review permit program, enforceable emissions limitations and control measures, and contingency measures. The attainment demonstration includes a modeling analysis showing that the enforceable emissions limitations and other control measures taken by the state will provide for RFP and expeditious attainment of the NAAQS (section 172(c)(2), (4), (6), and (7)).

On November 9, 2017, the Louisiana Department of Environmental Quality (LDEQ) submitted a nonattainment area SIP for the St. Bernard Parish area. On February 8, 2018, LDEQ submitted a letter to the EPA, accompanied by an Administrative Order on Consent (AOC), dated February 2, 2018, executed between LDEQ and the Rain CII Carbon, LLC (Rain) facility, that included new emissions limits for the Rain facility's cold stack and hot stack/pyroscrubber, as well as monitoring, testing and recordkeeping requirements. LDEQ submitted this as a source specific SIP revision and supplement to the 2017 nonattainment area SIP. Rain is a coke calcining operation that includes a waste heat recovery boiler. During normal operations, the exhaust from the calcining operation is routed through the recovery boiler and then through a scrubber and finally to the atmosphere through what is termed the "cold stack." During start up and times when the recovery boiler is down, emissions are routed to the atmosphere through what is known as the "hot stack." The modeling covers three operation scenarios: cold stack only operation, hot stack only operation, and a transitional period with emissions through both stacks. The transition period from hot stack to cold stack occurs in a phased approach, gradually

routing more and more exhaust to the cold stack from the hot stack until all exhaust is routed to the cold stack. The emission limits in the AOC included all operation regimes at the facility, with differing emission limits depending on the stage of operation defined by a minimum or range of flowrates and stack temperatures of the cold and hot stacks. On April 19, 2018, we published a proposed rulemaking action to approve the 2010 SO_2 Primary NAAQS Nonattainment Area SIP revision for St. Bernard Parish.[7] The April 19, 2018 action proposed approval of the following CAA SIP elements: the attainment demonstration for the SO_2 NAAQS; enforceable emissions limits including the AOC dated February 2, 2018, for the Rain facility; RFP plan; RACM and RACT demonstrations; emission inventories; and contingency measures. We also proposed to find that the State had demonstrated that its current nonattainment new source review (NNSR) program covered the 2010 one-hour SO_2 NAAQS; therefore, no revision to the SIP was required for the NNSR element.

After the close of the public comment period to the April 19, 2018 proposal, the LDEQ submitted additional information to EPA on August 24, 2018.[8] The additional information was submitted to EPA partly in response to a public comment that expressed concern that Rain would need to modify the February 2018 AOC entered between Rain and LDEQ as Rain did not believe that it could meet the limits set forth in the AOC without an additional extension to the compliance dates.[9] In response to the comment, and in order to determine feasible emission limits for operations during transitions from exhaust flow through the hot stack to the cold stack, LDEQ granted an extension of the deadline of the February 2018 AOC on April 27, 2018.[10]

On August 2, 2018, Rain and LDEQ revised their existing AOC. On August 24, 2018, LDEQ supplemented their SIP submittal with the revised AOC and additional modeling analysis. On

[7] See 83 FR 17349 (April 19, 2018).
[8] See letter from Secretary Chuck Carr Brown to Anne Idsal, August 24, 2018, St. Bernard 2008 Sulfur Dioxide State Implementation Plan Supplemental Information and Executed Administrative Order on Consent (AOC) included in the docket for this action.
[9] See the April 24, 2018 letter (in the docket to this action) from Senator Cassidy to EPA that referred to Rain's need to modify the February 2, 2018 AOC.
[10] See April 27, 2018 Letter from Secretary Chuck Carr Brown to Rain in the docket for this action.

October 9, 2018, LDEQ again supplemented their SIP with an updated modeling analysis. The revised AOC[11] and the October 9, 2018 modeling files served as a supplement to the November 9, 2017 and February 8, 2018 SIP submittals and incorporated certain additional AOC revisions (dated August 2, 2018) and supporting modeling into the 2010 SO_2 NAAQS Nonattainment Area SIP revision for St. Bernard Parish. On February 8, 2019, EPA proposed to approve LDEQ's August 24, 2018 and October 9, 2018 submittals as a supplement to the prior SIP submittals (84 FR 2801). Please refer to EPA's April 19, 2018 proposed approval and February 8, 2019 supplemental notice of proposed rulemaking.

In a May 29, 2019 final action, EPA approved the nonattainment SIP for the St. Bernard area (84 FR 24712). For additional information concerning the St. Bernard Parish, Louisiana nonattainment SIP revision see docket ID No. EPA-R06-OAR-2017-0558 available at *https://www.regulations.gov.*

II. Proposed Determination

A. Applicable Statutory and Regulatory Provisions

Section 179(c)(1) of the Act requires the EPA to determine whether a nonattainment area has achieved an applicable attainment date based on the area's air quality as of the attainment date. A determination of whether an area's air quality meets applicable standards is generally based upon the most recent three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database.[12] Data from ambient air monitors operated by state and local agencies in compliance with the EPA monitoring requirements must be submitted to AQS.[13] Monitoring agencies annually certify that these data are accurate to the best of their

[11] AOC signed by LDEQ and Rain on August 2, 2018, and submitted to EPA on August 24, 2018.
[12] AQS is the EPA's repository of ambient air quality data.
[13] See 40 CFR 58.16.

knowledge.[14] All SO_2 data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix T.

Under EPA regulations in 40 CFR 50.17 and in accordance with 40 CFR part 50 Appendix T, the 2010 one-hour annual SO_2 standard is met when the design value is less than or equal to 75 ppb. Design values are calculated by computing the three-year average of the annual 99th percentile daily maximum one-hour average concentrations.[15] An SO_2 one-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year is considered complete when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days are complete. A sampling day is considered complete if 75 percent of the hourly concentration values are reported; this includes data affected by exceptional events that have been approved for exclusion by the Administrator.[16]

We note that when determining the attainment status of SO_2 nonattainment areas, including when making determinations of attainment by the attainment date, in addition to ambient monitoring data, the EPA may also consider air quality dispersion modeling and/or a demonstration that the control strategy in the SIP has been fully implemented.[17] With regard to the use of monitoring data for such determinations, the EPA's SO_2 Nonattainment Area Guidance specifically notes that ''[i]f the EPA determines that the air quality monitors located in the affected area are located in the area of maximum concentration, the EPA may be able to use the data from these monitors to make the determination of attainment without the use of air quality modeling data." If there are no air quality monitors located in the affected area, or there are air quality monitors located in the area, but analyses show that none of the monitors are

[14] See 40 CFR 58.15.
[15] As defined in 40 CFR part 50, Appendix T section 1(c), daily maximum 1-hour values refer to the maximum one-hour SO_2 concentration values measured from midnight to midnight that are used in the NAAQS computations.
[16] See 40 CFR part 50, Appendix T sections 1(c), 3(b), 4(c), and 5(a).
[17] EPA, April 23, 2014 Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions ("SO_2 Nonattainment Area Guidance"), page 49.

located in the area of maximum concentration,[18] then air quality dispersion modeling will generally be needed to estimate SO_2 concentrations in the area. In this case, as discussed in our proposed actions on the St. Bernard nonattainment plan and Technical Support Documents (TSDs)[19], the monitors are not located in the area of expected maximum concentration, meaning we must also consider the available modeling data in determining whether the area attained by the attainment date. When relying on a modeling demonstration based on allowable emissions for purposes of determining attainment by the attainment date, the EPA looks to whether the emission limit or limits were adopted and whether the relevant source or sources were complying with those modeled limits prior to the attainment date. That is, when determining attainment by the attainment date using air quality modeling of allowable emissions, EPA looks to whether the state has demonstrated that the control strategy in the SIP has been fully implemented (compliance records demonstrating that the control measures have been implemented as required by the approved SIP). This is necessary because a modeling demonstration based on allowable emissions is not itself sufficient since, without the supporting emissions information reflected in the control strategy, there would be no way to confirm that the actual emissions were below the modeled limits within the period under review.

B. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. The EPA's monitoring requirements are specified by regulation in 40 CFR part 58. These requirements are applicable to state, and where delegated, local air monitoring agencies that operate criteria pollutant monitors. In section 4.5 of Appendix D to 40 CFR part 58, the EPA specifies the minimum requirements for SO_2 monitoring sites to be classified as state or local air monitoring stations (SLAMS). SLAMS produce data that are eligible for comparison with the NAAQS, and therefore, the

[18] See section VIII.A of the SO_2 Nonattainment Area Guidance

[19] See EPA's April 19, 2018 proposed approval (83 FR 17349), February 8, 2019 supplemental notice of proposed rulemaking (84 FR 2801) and EPA's Technical Support Documents, available in the docket for this action.

monitor must be an approved federal reference method (FRM) or federal equivalent method (FEM), per section 2 of Appendix C to 40 CFR Part 58. In St. Bernard Parish, LDEQ operates a SLAMS monitor at Chalmette-Vista (EPA Site ID 22-087-0007, 24 E. Chalmette Circle). In addition, LDEQ operates a special purpose monitor (SPM) at Meraux (EPA Site ID 22-087-0004, 4101 Mistrot Drive).

C. Data Considerations and Proposed Determination

a. Monitor Data

Under 40 CFR 58.15, monitoring agencies must certify, on an annual basis, data collected at all SLAMS by FRM, FEM, and special purpose monitors (SPMs) that meet EPA quality assurance requirements. In doing so, monitoring agencies must certify that the previous year of ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate to the best of their knowledge.

The one-hour SO_2 design values at Chalmette Vista and Meraux monitoring sites within the St. Bernard area for the 2013–2020 period are shown below.

Table 1. 2013-2020 one-hour design values for the St. Bernard area

Years	**Chalmette Vista Design Value (ppb)**	**Meraux Design Value (ppb)**
2013-2015	114	19
2014-2016	82	16
2015-2017	73	13
2016-2018	59	10
2017-2019	44	7
2018-2020	42	8

The attainment date for the area was October 4, 2018. In order for the EPA to determine that the area attained by the October 4, 2018 attainment date based solely on air quality monitoring data, the design value based upon complete, quality-assured monitored air quality data from three consecutive years (2015-2017) at each eligible monitoring site must be equal to or less

than 75 ppb for the one-hour standard, and air quality modeling would need to show that there was an air quality monitor located in the area of maximum concentration.

Although the one-hour SO_2 design values at the Chalmette Vista monitoring site located within the St. Bernard area show a downward trend of SO_2 concentrations less than 75 ppb for the one-hour standard beginning with the 2015-2017 design value, this monitor is not located in the area of maximum predicted concentration, and therefore cannot be used, on its own, to determine that the St. Bernard Parish area attained by the attainment date.

b. Modeling Data

LDEQ and Rain developed the one-hour SO_2 emission limits contained in the August 2, 2018 AOC to ensure compliance with the SO_2 NAAQS. The emission limits in the AOC were effective August 2, 2018. The LDEQ undertook an additional modeling analysis which also incorporated the amended stack parameters and utilized more recent allowable emission rates from other contributing sources, an expanded receptor grid, and covered all operating scenarios. The additional modeling used the most recent version of AERMOD and followed EPA's guidance for SIP modeling for SO_2.[20] The analysis included modeling allowable emissions and stack parameters for different operational stages at the Rain facility, including stand-alone operations for the waste heat boiler and the pyroscrubber as well as transition stages between the two modes of operation; a summary of the results is given in Table 2. The modeling demonstration approved in the nonattainment SIP demonstrates that compliance with the emission limits and required stack parameters in the AOC provide for attainment, with predicted SO_2 concentrations near (just below) the NAAQS if the emission limits and stack parameters are met.[21] Additional, more detailed discussion of the State's modeling is contained in the TSD for the EPA's proposed Approval and Promulgation of Implementation Plans; Louisiana Attainment

[20] See Appendix A, page A-1 of the SO_2 Nonattainment Area Guidance.
[21] See Table 2.

Demonstration for the St. Bernard Parish 2010 SO_2 Primary National Ambient Air Quality Standard Nonattainment Area published on February 8, 2019 (84 FR 2801).

Table 2. Summary of LDEQ Supplemental Modeling Results for the St. Bernard Parish SIP Using the Emission Limits and Stack Parameters from the AOC.

Operational Stage	**Model Design Value**
Waste Heat Boiler Stack Alone	190.8 µg/m^3 (72.9 ppb)
Pyroscrubber Stack Alone	176.6 µg/m^3 (67.4 ppb)
Transition between Pyroscrubber Stack to the Waste Heat Boiler Stack (transitional stage with maximum design value)	185.6 µg/m^3 (70.9 ppb)

c. Record of Compliance

As noted, when relying on modeling of allowable emissions to support a determination of whether an area has attained by its attainment date, the EPA must also look at whether the control strategy in the SIP has been fully implemented and whether the relevant sources in an area are complying with the emission limits and stack parameters required in the SIP. As discussed above, the modeling, based on the August 2, 2018 AOC limits, shows attainment of the NAAQS with maximum modeled concentrations just below the 75 ppb standard. Emissions higher than modeled limits and/or actual stack parameters (flowrate or temperature) below the modeled stack parameters can result in downwind concentrations higher than those modeled. We note that Rain's compliance records, Title V deviation reports, and annual stack tests since August 2, 2018 (the effective date of AOC) demonstrate a pattern of difficulty complying with the SIP emission limits at all times and difficulty in estimating emissions and flowrates from the

pyroscrubber to demonstrate compliance.[22] During the 9-week period between when the AOC limits became effective (August 2, 2018) and the attainment date (October 4, 2018), Rain reported that deviations occurred on 7 separate days for a total duration of 27.2 hours (25.2 hours due to calculated pyroscrubber flowrates less than the AOC requirements, and 2 hours when cold stack emissions exceeded the AOC emission limits).[23] Rain has since identified the need to revise the limits and potentially adjust the methodology used to estimate emissions and flowrates in the pyroscrubber that are contained in the AOC. In March of 2019, Rain conducted the first annual stack test as required by the August 2, 2018 AOC.[24] The 2019 stack test report found that "the AOC hot stack equation underestimates hot stack emissions during most of the transition from hot stack to cold stack" and "[d]uring no hour did the combined flue gas flow and temperature meet the description of any transition stage." The report then states "the AOC limits and conditions do not reflect actual emissions conditions and it is difficult to identify the appropriate transition stage," before recommending that the August 2018 AOC's flue gas flow rates, temperatures, and emissions limits for transitions stages 1, 2, and 3 be replaced with new conditions. Generally, one stack test may not be determinative, but the EPA believes that it is reasonable to conclude that the problems identified in the 2019 stack test were significant and, in conjunction with the 2018 semiannual monitoring report violations, indicative that the facility not only failed to meet the AOC requirements during the two days of the stack test, but likely failed to meet the 2018 AOC's transition stage operational requirements during the period between the effective date of the AOC and the attainment date.

The EPA also notes that the semiannual monitoring report for January through June 2020, while not the basis or rational for our decision making, includes additional deviations indicating that the facility continued to have difficulty complying with the limits in the SIP after the

[22] See deviations listed in semiannual monitoring reports for 2018. We also note as dicta that the source continued to experience deviations in 2019 and 2020. The semiannual monitoring reports for 2018, 2019, and 2020 as well as the 2019 and 2020 stack test reports are available in the docket for this action.
[23] See deviations listed in semiannual monitoring report for July 1 – December 31, 2018.
[24] Annual stack tests are a requirement of the August 2, 2018 AOC. The 2019 stack test was the first annual stack test performed pursuant to this requirement.

attainment date had passed. The report further states that: "Rain continues to analyze this and similar deviations to identify a corrective action. The permit requirements do not match actual start-up conditions. Rain is in negotiations with EPA and LDEQ to revise the permit requirements to reflect actual start-up conditions."

From the available information, EPA cannot determine with certainty that the area attained the NAAQS as the emissions and stack parameters at times fall outside the limits and conditions modeled in the approved attainment demonstration. The noted violations of the permit limits or underestimated emissions may have resulted in violations of the one-hour SO_2 NAAQS in areas other than the monitored location. Furthermore, the data demonstrates a clear need for development of a new attainment SIP with revised limits that better align with the source's operations and modeling to demonstrate attainment.

d. EPA's Proposed Determination

Based on our review of the monitor, modeling and compliance data, EPA proposes to find that the St. Bernard area did not attain the 2010 one-hour SO_2 NAAQS by the October 4, 2018 attainment date. The modeling data demonstrates that the emission limits and stack parameters in the AOC required of the Rain facility were necessary for the St. Bernard area to attain the standard. However, review of Rain's compliance record demonstrates that emissions have exceeded those limits, and stack temperatures and flowrates have not met the necessary parameters to demonstrate attainment in the St. Bernard area. As described in the previous section, Rain reported deviations during the period between the effective date of the limits and the attainment date. Rain has also reported underestimation of emissions from the hot stack when comparing estimated emissions to the measured emissions during the 2019 stack test indicative that Rain has failed to meet the AOC limits since the effective date. We also note, without relying upon, that Rain continued to report deviations in additional stack tests and deviation reports from 2018, 2019, and 2020. Under CAA section 179(d)(2), if the EPA determines that an area did not attain the NAAQS by the applicable deadline, the responsible air

agency has up to 12 months from the effective date of the determination to submit a revised SIP for the area demonstrating attainment and containing any additional measures that the EPA may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts as required. According to CAA section 179(d)(3), this revised SIP is to achieve attainment of the one-hour SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of the area's failure to attain (i.e., 5 years after the EPA publishes a final action in the ***Federal Register*** determining that the nonattainment area failed to attain the SO_2 NAAQS). In addition to triggering requirements for a new SIP submittal, a final determination that a nonattainment area failed to attain the NAAQS by the attainment date would trigger the implementation of contingency measures adopted under 172(c)(9).

III. Proposed Action

Under CAA section 179(d)(2), the EPA proposes to determine that the St. Bernard Parish SO_2 nonattainment area has failed to attain the 2010 one-hour SO_2 standard of 75 ppb by the applicable attainment date of October 4, 2018. This determination is based upon review of (1) the state's air quality modeling demonstration, which showed the emission limits and stack parameters required at Rain, the primary source of SO_2 emission in the area, that were necessary to provide for the area's attainment and (2) Rain's available compliance records. The state's dispersion modeling, which was based on the allowable limits in the AOC, showed that with compliance with the limits, modeled design values were close to the SO_2 NAAQS. Rain has demonstrated a pattern of difficulty meeting its federally enforceable applicable SO_2 emission limits and stack parameters (memorialized in its Title V permit and the AOC). Emissions have exceeded those limits, and stack temperatures and flowrates have not met the necessary parameters to demonstrate attainment in the St. Bernard area, including the deviations noted above during the period between the effective date of the limits and the attainment date and reported underestimation of emissions from the hot stack. If finalized as proposed, the State of

Louisiana would be required under CAA section 179(d) to submit revisions to the SIP for the St. Bernard area. The required SIP revision for the area must, among other elements, demonstrate expeditious attainment of the SO_2 standard within the time period prescribed by CAA section 179(d) and such additional measures as the Administrator may reasonably prescribe that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. If finalized as proposed, the SIP revisions required under CAA section 179(d) would be due for submittal to the EPA no later than one year after the publication date of the final action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at http://www2.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action, if finalized, would require the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531-1538) and does not significantly or uniquely affect small governments.

This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that the St. Bernard Parish SO_2 nonattainment area failed to attain the SO_2 NAAQS by the applicable attainment dates. If finalized, this determination would trigger existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not impose any federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The proposed finding of failure to attain the SO_2 NAAQS does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the St. Bernard Parish SO_2 nonattainment area. Thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The effect of this proposed action, if finalized, would be to trigger additional planning requirements under the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Pollution, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq*.

Dated: December 1, 2021.

David Gray,
Acting Regional Administrator, Region 6.

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